

AMENDED IN ASSEMBLY JUNE 14, 2006

AMENDED IN SENATE MAY 1, 2006

AMENDED IN SENATE APRIL 18, 2006

**SENATE BILL**

**No. 1724**

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**Introduced by Senator Runner**

February 24, 2006

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An act to add Section 89546.5 to the Education Code, to amend ~~Section 900.2 of Sections 900.2 and 915 of~~, and to add Sections 905.9 and 912.5 to, the Government Code, and to amend Section 10295.1 of the Public Contract Code, relating to the California State University.

LEGISLATIVE COUNSEL'S DIGEST

SB 1724, as amended, Runner. California State University.

(1) Existing law establishes the California State University under the administration of the Trustees of the California State University. Existing law authorizes the trustees to hire officers and employees to carry out the functions of the university. Pursuant to a provision of the California Constitution, the officers and employees of the California State University are exempt from civil service.

The State Civil Service Act, among other things, enacts provisions relating to the procedure to be followed when a civil service employee is overpaid.

This bill would enact provisions relating to recovery procedures for overpayments that are applicable to employees of the California State University, and that are substantially similar to the comparable provisions in the State Civil Service Act that are related to state civil service employees.

(2) Existing law, the Tort Claims Act, sets forth, among other things, the procedures for filing a claim against a statewide public entity. The act specifies that a claim against the state is to be filed with the Victim Compensation and Government Claims Board, unless the claim is against a judicial branch entity or judge of one of those entities, in which case the claim is filed with the Judicial Council.

This bill would also exempt claims against the California State University from the requirement that a claim against the state be filed with the Victim Compensation and Government Claims Board. The bill would instead require that claims against the California State University be filed with the Trustees of the California State University.

(3) Existing law prohibits, except under specified circumstances, a state department or agency, as defined, from contracting with a vendor, contractor, or an affiliate of a vendor or contractor, unless that vendor or contractor, and all of its affiliates that make sales for deliveries into California, are holders of a California seller's permit issued as prescribed. Existing law defines "state department or agency," for these purposes, to include every state office, department, division, bureau, board, commission, and the California State University, and to exclude the University of California, the Legislature, the courts, and any agency in the judicial branch of government.

This bill would also exclude the California State University from this prohibition.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 89546.5 is added to the Education
- 2 Code, to read:
- 3 89546.5. (a) (1) When the trustees determine that an
- 4 overpayment has been made to an employee, they shall notify the
- 5 employee of the overpayment and afford the employee an
- 6 opportunity to respond prior to commencing recoupment actions.
- 7 Thereafter, reimbursement shall be made to the trustees through
- 8 one of the following methods mutually agreed to by the
- 9 employee and the trustees:
- 10 (A) Cash payment or payments.

1 (B) Installments, through payroll deductions, to cover at least  
2 the same number of pay periods in which the error occurred.  
3 When overpayments have continued for more than one year, full  
4 payment may be required by the trustees through payroll  
5 deductions over the period of one year.

6 (C) The adjustment of appropriate leave credits or  
7 compensating time off, provided that the overpayment involves  
8 the accrual or crediting of leave credits (for example, vacation,  
9 annual leave, or holiday) or compensating time off. Any errors in  
10 sick leave balances may only be adjusted with sick leave credits.

11 (2) Absent mutual agreement on a method of reimbursement,  
12 the trustees shall proceed with recoupment in the manner set  
13 forth in subparagraph (B) of paragraph (1).

14 (b) An employee who is separated from employment prior to  
15 full repayment of the amount owed shall have withheld from any  
16 money owing the employee upon separation an amount sufficient  
17 to provide full repayment. If the amount of money owing upon  
18 separation is insufficient to provide full reimbursement to the  
19 trustees, the trustees shall have the right to exercise any and all  
20 other legal means to recover the additional amount owed.

21 (c) Amounts deducted from the payment of salary or wages  
22 pursuant to this section, except as provided in subdivision (b),  
23 shall in no event exceed 25 percent of the employee's net  
24 disposable earnings.

25 (d) No administrative action shall be taken by the trustees  
26 pursuant to this section to recover an overpayment unless the  
27 action is initiated within three years from the date of  
28 overpayment.

29 (e) If the provisions of this section are in conflict with the  
30 provisions of a memorandum of understanding reached pursuant  
31 to Chapter 12 (commencing with Section 3560) of Division 4 of  
32 Title 1 of the Government Code, the memorandum of  
33 understanding shall be controlling without further legislative  
34 action, except that, if the provisions of a memorandum of  
35 understanding require the expenditure of funds, the provisions  
36 shall not become effective unless approved by the Legislature in  
37 the annual Budget Act.

38 SEC. 2. Section 900.2 of the Government Code is amended to  
39 read:

40 900.2. "Board" means:

1 (a) In the case of a local public entity, the governing body of  
2 the local public entity.

3 (b) In the case of the state, except as provided by subdivisions  
4 (c) and (d), the Victim Compensation and Government Claims  
5 Board.

6 (c) In the case of a judicial branch entity or judge of one of  
7 those entities, the Judicial Council.

8 (d) In the case of the California State University, the Trustees  
9 of the California State University.

10 *SEC. 3. Section 905.9 is added to the Government Code, to*  
11 *read:*

12 *905.9. All claims against the California State University for*  
13 *money or damages based upon an express contract or for an*  
14 *injury for which the Board of Trustees of the California State*  
15 *University is liable shall be presented in accordance with*  
16 *Chapter 1 (commencing with Section 900) and Chapter 2*  
17 *(commencing with Section 910).*

18 *SEC. 4 Section 912.5 is added to the Government Code, to*  
19 *read:*

20 *912.5. The Board of Trustees of the California State*  
21 *University shall act on a claim against the California State*  
22 *University.*

23 *SEC. 5. Section 915 of the Government Code is amended to*  
24 *read:*

25 915. (a) A claim, any amendment thereto, or an application  
26 to the public entity for leave to present a late claim shall be  
27 presented to a local public entity by either of the following  
28 means:

29 (1) Delivering it to the clerk, secretary or auditor thereof.

30 (2) Mailing it to the clerk, secretary, auditor, or to the  
31 governing body at its principal office.

32 (b) Except as provided in ~~subdivision~~ subdivisions (c) and (d),  
33 a claim, any amendment thereto, or an application for leave to  
34 file a late claim shall be presented to the state by either of the  
35 following means:

36 (1) Delivering it to an office of the Victim Compensation and  
37 Government Claims Board.

38 (2) Mailing it to the Victim Compensation and Government  
39 Claims Board at its principal office.

1 (c) A claim, any amendment thereto, or an application for  
2 leave to file a late claim shall be presented to a judicial branch  
3 entity in accordance with the following means:

4 (1) Delivering or mailing it to the court executive officer, if  
5 against a superior court or a judge, court executive officer, or  
6 trial court employee, as defined in Section 811.9, of that court.

7 (2) Delivering or mailing it to the clerk/administrator of the  
8 court of appeals, if against a court of appeals or a judge of that  
9 court.

10 (3) Delivering or mailing it to the Clerk of the Supreme Court,  
11 if against the Supreme Court or a judge of that court.

12 (4) Delivering or mailing it to the Secretariat of the Judicial  
13 Council, if against the Judicial Council or the Administrative  
14 Office of the Courts.

15 *(d) A claim, any amendment thereto, or an application for*  
16 *leave to file a late claim shall be presented to the Board of*  
17 *Trustees of the California State University in accordance with*  
18 *either of the following:*

19 *(1) Delivering to the Office of Risk Management at the*  
20 *chancellor's office.*

21 *(2) Mailing to the Office of Risk Management at the*  
22 *chancellor's office.*

23 ~~(d)~~

24 (e) A claim, amendment or application shall be deemed to  
25 have been presented in compliance with this section even though  
26 it is not delivered or mailed as provided in this section if it is  
27 actually received by the clerk, secretary, auditor or board of the  
28 local public entity, is actually received at an office of the Victim  
29 Compensation and Government Claims Board, *if against the*  
30 *California State University, it is actually received by the board of*  
31 *trustees of the California State University*, or, if against a judicial  
32 branch entity or judge, it is actually received by the court  
33 executive officer, court clerk/administrator, court clerk, or  
34 secretariat of the judicial branch entity, within the time  
35 prescribed for presentation thereof.

36 ~~(e)~~

37 (f) A claim, amendment or application shall be deemed to have  
38 been presented in compliance with this section to a public agency  
39 as defined in Section 53050 if it is delivered or mailed within the  
40 time prescribed for presentation thereof in conformity with the

1 information contained in the statement in the Roster of Public  
2 Agencies pertaining to that public agency which is on file at the  
3 time the claim, amendment or application is delivered or mailed.  
4 As used in this subdivision, “statement in the Roster of Public  
5 Agencies” means the statement or amended statement in the  
6 Roster of Public Agencies in the office of the Secretary of State  
7 or in the office of the county clerk of any county in which the  
8 statement or amended statement is on file.

9 ~~SEC. 3.~~

10 *SEC. 6.* Section 10295.1 of the Public Contract Code is  
11 amended to read:

12 10295.1. (a) A state department or agency shall not contract  
13 for the purchase of tangible personal property from a vendor,  
14 contractor, or an affiliate of a vendor or contractor, unless that  
15 vendor, contractor, and all of its affiliates that make sales for  
16 delivery into California are holders of a California seller’s permit  
17 issued pursuant to Article 2 (commencing with Section 6066) of  
18 Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation  
19 Code, or are holders of a certificate of registration issued  
20 pursuant to Section 6226 of the Revenue and Taxation Code. A  
21 vendor or contractor that sells tangible personal property to a  
22 state department or agency, and each affiliate of that vendor or  
23 contractor that makes sales for delivery into California, shall be  
24 regarded as a “retailer engaged in business in this state,” and  
25 shall be required to collect the California sales or use tax on all  
26 its sales into the state in accordance with Part 1 (commencing  
27 with Section 6001) of Division 2 of the Revenue and Taxation  
28 Code.

29 (b) Beginning on and after January 1, 2004, each vendor,  
30 contractor, or affiliate of a vendor or contractor that is offered a  
31 contract to do business with a state department or state agency  
32 shall submit to that state department or agency a copy, as  
33 applicable, of that retailer’s seller’s permit or certificate of  
34 registration, and a copy of each of the retailer’s applicable  
35 affiliate’s seller’s permit or certificate of registration, as  
36 described in subdivision (a). This subdivision does not apply to a  
37 credit card purchase of goods of two thousand five hundred  
38 dollars (\$2,500) or less. The total amount of exemption  
39 authorized herein shall not exceed seven thousand five hundred  
40 dollars (\$7,500) per year for each company from which a state

1 agency is purchasing goods by credit card. It shall be the  
2 responsibility of each state agency to monitor the use of this  
3 exemption and adhere to these restrictions on these purchases.

4 (c) A state department or state agency is exempted from the  
5 provisions of subdivision (a) if the executive director of that state  
6 department or agency, or his or her designee, makes a written  
7 finding that the contract is necessary to meet a compelling state  
8 interest.

9 (d) For the purposes of this section:

10 (1) "Affiliate of the vendor or contractor" means any person or  
11 entity that is controlled by, or is under common control of, a  
12 vendor or contractor through stock ownership or any other  
13 affiliation.

14 (2) "Compelling state interest" includes, but is not necessarily  
15 limited to, the following:

16 (A) Ensuring the provision of essential services.

17 (B) Ensuring the public health, safety, and welfare.

18 (C) Responding to an emergency, as defined in Section 1102.

19 (3) "State department or agency" means every state office,  
20 department, division, bureau, board, and commission, but does  
21 not include the University of California, the California State  
22 University, the Legislature, the courts, and any agency in the  
23 judicial branch of government.